IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1444 OF 1997

Maharashtra State Road Transport
Corporation
through Divisional Traffic Officer
Ratnagiri Division, Ratnagiri ... Petitioner

V/s.

Shri Anandrao Dhondiab Namdas
r/o Banagarwadi, Post: Pulkoti
Tal.: Man, Dist.: Satara ... Respondent

Mr.G.S. Hegde for Petitioner
Mr.P.K. Dhakephalkar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 12, 2004**

ORAL JUDGMENT:

. By this Petition, the Maharashtra State Road Transport Corporation challenges the order of the Labour Court in complaint (ULP) No.134 of 1990 and the order of the Industrial Court in revision confirming the order of the Labour Court. The Labour Court has found that the respondent-workman has not committed any act of misconduct and, therefore, has held that the Petitioner had engaged in an unfair labour practice under Item 1 of Schedule IV of the MRTU & PULP Act. The Labour Court has further directed the Petitioner to reinstate the workman in service on his original post as a driver with continuity of service and full backwages.

2. While the respondent was driving the petitioner's bus with passengers in it, he dashed against a trailor which was parked to the left of the road. This trailor contained pipes which were protruded beyond the body of the trailor. Because of the impact, some passengers in the bus were injured. Spot statements were recorded by the traffic inspector of the Petitioner. The respondent had stated in the spot statement that while he was driving along the highway, a truck came in the opposite direction with headlights on. He tried to take the bus on to the left side of the road where one trailor was parked with pipes in it. It appears that this trailor did not have any danger light or sign nor was there any indication to warn the driver that the stationary trailor contained pipes. As a consequence of the spot statements, a departmental enquiry was held against the respondent, and the enquiry officer having found him guilty, the petitioner terminated his services by way of dismissal. Aggrieved by this order, the respondent filed complaint (ULP) No.134 of 1990 under Item 1 of Schedule IV of the MRTU & PULP Act.

3. By its order dated 21.3.1999, the Labour Court came to the conclusion that the accident had not occurred as a result of any negligence on the part of

the respondent and that therefore,the findings of the Enquiry Officer were perverse and baseless. The Labour Court was of the view that the charges were not proved against the respondent and that the Petitioner had committed an act of unfair labour practice in colourable exercise of the employer's rights. The Labour Court also considered the past service record of the respondent and found that his default-card showed the respondent's record was unblemished. The Labour Court, accordingly, granted reinstatement with continuity of service and full backwages.

4. The revision application filed by the Petitioner met with the same fate. In the revision application, the Petitioner had pleaded that the Labour Court was in error in not permitting them to lead evidence once it came to the conclusion that the findings of the Enquiry Officer were perverse. The Industrial Court held that on scrutinising the spot statements, it could not be said that the respondent was negligent while driving the bus nor would it be said that he driving at a rash speed. The Industrial Court found that the driver of the trailor was reversing and therefore, the respondent had no opportunity to evade the accident.

5. Mr.Hegde, appearing for the Petitioner, takes strong exception to the orders of both the Courts below

and submits that the respondent himself has admitted that the accident took place on 9.6.1989. He submits that the spot statements of the passengers do not support the contention of the respondent and in fact the respondent had all the opportunity to avoid the accident.

6. It appears that both the Courts below have proceeded on the footing that the Respondent had no opportunity to avoid the accident and that it had occurred on account of there being no danger mark or danger light on the trailor or on the pipes which protruded from the trailor. But this does not take into consideration the fact that the accident occurred at 5.30 in the morning. Moreover, the bus had headlights and the respondent could have avoided the accident. It is no doubt true that the accident has occurred on account of there being no lights or indicators on the stationary trailor but the respondent could have avoided the accident had he taken enough care or caution. The findings of the Industrial Court that the tailor was being reversed are not supported by the order of the Labour Court. Therefore, these findings of the Industrial Court cannot be accepted.

7. In my view, although the respondent has committed an act of negligence of driving the bus, the

misconduct is not such as would warrant the punishment of dismissal. In my view, the punishment of deprivation of 50% backwages would be sufficient for the misconduct alleged against the respondent. Taking into consideration all these factors, the petition is allowed partly. The respondent has already been reinstated as observed by the order of the Industrial Court.

8. In view of this, the orders of the Labour Court and the Industrial Court are modified to the extent that the Petitioner is liable to pay only 50% of the backwages. However, the orders in respect of reinstatement with continuity of service will be maintained. Petition is disposed of accordingly.

9. Parties be provided an authenticated copy of this order.